

APPEAL NO. 010034

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 5, 2000, a contested case hearing (CCH) was held. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not injure his neck in addition to the injury to his right and left shoulders on _____. The claimant appealed and the respondent (carrier) responded.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury to his shoulders. The claimant testified that on that day he injured his shoulders and neck stacking heavy boxes at work. There was conflicting evidence regarding where and when the claimant injured his neck and conflicting medical opinions regarding the cause of the claimant's neck condition. As the trier of fact the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's determination that on _____, the claimant did not injure his neck performing his stacking duties at work is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer did not commit reversible error in determining that the claimant failed without good cause to timely exchange the three exhibits that were excluded from evidence.

The claimant complains on appeal that he should have been assisted by an ombudsman other than the ombudsman who assisted him at the CCH. We find no merit in that complaint because at the outset of the CCH the claimant represented to the hearing officer that the ombudsman who assisted him at the CCH had met with him for at least 15 minutes prior to the CCH to review his case and that he wanted to proceed with the assistance of that ombudsman.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge